IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Food Corporation of India vs. Seva Lal

S.B.Civil Misc.Appeal No.421/92 against the judgment and decree dated 18.7.1992 passed by the learned District Judge, Churu in Civil Misc.Case No.31/83.

Date of Judgment: August 18, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajesh Joshi for the appellant.
Mr. Vasudev Daddich for the respondent.

BY THE COURT:

This appeal is against the order of the learned District Judge, Churu dated 18.7.1992 passed in Civil Misc. Case No.31/1983 whereby the learned District Judge rejected the appellant's objection against the award dated 30.5.1983 passed by the learned arbitrator rejecting the claim of the appellant and allowing the counter claim of the respondent for Rs.3000/-

Brief facts of the case are that the appellant invited tenders for appointment of handling and transporting goods for their work at Sadulpur. The respondent submitted his tender on 29.8.1974 quoting rates @ Rs.200/- per annum above the schedule of rates. The work was of loading, unloading and transportation of food-grains etc. The

respondent's tender was found lowest and, therefore, was accepted for a period of two years w.e.f. 15.11.1974 to 14.11.1976. The respondent started work but could not continue the work, therefore, according to the appellant, the respondent's contract was terminated under clause X (b) and (c) of the agreement vide Regional Office order sent by telegram dated 20/21.4.1976. The remaining work was got done by the appellant through another contractor. The another contractor charged the higher rates, therefore, the appellant claimed Rs.64,456.37 on the ground of breach of contract and loss suffered by the appellant. The appellant-Food Corporation of India, submitted a petition under Section 20 of the Arbitration Act for appointment of arbitrator, before the court of learned District Judge. The learned District Judge, Churu appointed one Shri Ghanshyam Das Gupta, as arbitrator.

Before the learned arbitrator, the appellant submitted claim of Rs.64,456.37, whereas the respondent-contractor submitted his claim for refund of security amount of Rs.3000/- along with interest. The learned arbitrator recorded the oral evidence of the witnesses produced by both the parties. The learned arbitrator, vide award dated 30.5.1983, rejected the claim of the appellant and allowed the counter claim filed by the respondent for refund of security amount along with interest.

Being aggrieved against the award dated 30.5.1983, the appellant submitted objection under sections 30 and 33 of the Arbitration Act,

1940 for setting aside of the award dated 30.5.1983 on the ground that the learned arbitrator did not consider the relevant documents terminating the contract by the appellant and conveying it to the respondent by telegram dated 21.4.1976. The another ground was that the learned arbitrator passed the award after period of limitation though on the basis of the consent given by both the parties before the learned arbitrator, but by consent of two parties, the limitation for passing the award could not have been extended. It is also submitted before the learned District Judge that the learned arbitrator wrongly awarded Rs.3000/-, the refund of the amount of the security amount. The learned District Judge considered the arguments of the appellant and observed that the learned arbitrator in detail, considered the oral as well as documentary evidence produced by the parties and the allegation of the appellant that the learned arbitrator did not consider the evidence and particularly the telegram sent by the appellant to the respondent as well as letters, appears to be wrong from the award. The learned District Judge also observed that the appellant cannot raise any objection of limitation because of the reason that the appellant itself gave express consent for the extension of the period for passing the award. The learned District Judge further observed that whether the appellant had any power and justification to forfeit the security amount of the respondent, was the issue specifically framed and the parties

argued on this point and, therefore, the learned arbitrator had decided the claim of the respondent in accordance with law. The objections were rejected by the learned District Judge by order dated 18.7.1992 and the award was made rule of the court. The learned District Judge also allowed the interest @ 12% per annum, w.e.f. 18.7.1992, the date of order of the civil court.

The learned counsel for the appellant tried to assail the order of the learned District Judge as well as the award on the ground which were raised before the court below. According to the learned counsel for the appellant, the appellant gave telegram to the respondent on 1.9.1975 for cancellation of respondent's agreement and confirmation letter(Ex.1) and another telegram and confirmation letter (Ex.2) were also given to the respondent. It is also submitted that dispatch register was also exhibited before the learned arbitrator, even then the learned arbitrator did not apply its mind to the facts of the case and wrongly held that from the copies of the telegram produced by the appellant, it cannot be presumed that the said telegram delivered to the respondent. Therefore, according to the learned counsel for the appellant, the award has been passed by the learned arbitrator without considering the evidence on record. It is also submitted that the learned arbitrator passed the award without framing issue regarding notice and telegram and letters sent by the appellant to the respondent. It is also submitted

by the learned counsel for the appellant that the respondent, in his evidence, has not denied the receipt of letters and telegrams and, therefore, because of this reason also, the termination of the contract by the appellant in accordance with law is proved. In view of the above reasons, the appellant had rightly forfeited the security amount. It is also submitted that the learned District Judge did not discuss the evidence and rejected the objection petition filed by the appellant.

I considered the submissions of the learned counsel for the parties and perused the record also.

At the outset, it can be said that there is no allegation of mala fide in fact against the learned arbitrator in passing the award. So far as arguments of the learned counsel for the appellant is concerned, that relates to the appreciation of evidence by the learned arbitrator. The learned arbitrator, not only took on record the documentary evidence but permitted both the parties to lead oral evidence. The learned arbitrator considered each and every document produced by the parties specifically and thereafter held that the appellant failed to prove termination of contract in accordance with law and further failed to prove that any opportunity of hearing was given to the respondent-contractor before terminating his contract or forfeiting the security money. The learned arbitrator further observed that in case the respondent closed work in the month of February, 1976 then how

payment was made to him in the month of April, 1976. The learned arbitrator also observed that the contention of the appellant that Seva Lal had no sufficient money, appears to be wrong because he already completed work of 7000 metric tons. The learned Arbitrator also observed that because of some enmity, the officers of the appellant were not happy with the respondent, therefore, they were interested in terminating the contract without any fault of the contractor. In sum and substance, it appears from the award dated 30.5.1983, the learned arbitrator considered the evidence and the allegation of the appellant that the evidence has not been considered by the learned arbitrator, appears to be absolutely wrong. So far as extension of time for arbitral proceeding is concerned, for that the consent was given by the appellant itself and when the award went against the appellant, the appellant has raised the objection, therefore, the appellant is not entitled to raise the objection about the delay in passing the award by the learned arbitrator.

In view of the above facts and circumstances, the learned arbitrator was fully justified in passing the order of refund of security money and interest over that amount.

In view of the above discussion, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.